

CENTER FOR DISABILITY ACCESS  
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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

**Scott Johnson,**

Plaintiff,

v.

**Mid Peninsula Hotel, LLC,** a  
California Limited Liability  
Company; and Does 1-10,

Defendants.

**Case No.**

**Complaint For Damages And  
Injunctive Relief For Violations  
Of: American's With Disabilities  
Act; Unruh Civil Rights Act**

Plaintiff Scott Johnson complains of Mid Peninsula Hotel, LLC, a California Limited Liability Company; and Does 1-10 ("Defendants"), and alleges as follows:

**PARTIES:**

1. Plaintiff is a California resident with physical disabilities. Plaintiff is a level C-5 quadriplegic. He cannot walk and also has significant manual dexterity impairments. He uses a wheelchair for mobility and has a specially equipped van.

2. Defendant Mid Peninsula Hotel, LLC owned the real property located

1 at or about 950 El Camino Real, San Carlos, California, in December 2017.

2 3. Defendant Mid Peninsula Hotel, LLC owned the real property located  
3 at or about 950 El Camino Real, San Carlos, California, in June 2018.

4 4. Defendant Mid Peninsula Hotel, LLC owned the real property located  
5 at or about 950 El Camino Real, San Carlos, California, in October 2018.

6 5. Defendant Mid Peninsula Hotel, LLC owns the real property located at  
7 or about 950 El Camino Real, San Carlos, California, currently.

8 6. Defendant Mid Peninsula Hotel, LLC owned Lia Hotel located at or  
9 about 950 El Camino Real, San Carlos, California, in December 2017.

10 7. Defendant Mid Peninsula Hotel, LLC owned Lia Hotel located at or  
11 about 950 El Camino Real, San Carlos, California, in June 2018.

12 8. Defendant Mid Peninsula Hotel, LLC owned Lia Hotel located at or  
13 about 950 El Camino Real, San Carlos, California, in October 2018.

14 9. Defendant Mid Peninsula Hotel, LLC owns Lia Hotel ("Hotel") located  
15 at or about 950 El Camino Real, San Carlos, California, currently.

16 10. Plaintiff does not know the true names of Defendants, their business  
17 capacities, their ownership connection to the property and business, or their  
18 relative responsibilities in causing the access violations herein complained of,  
19 and alleges a joint venture and common enterprise by all such Defendants.  
20 Plaintiff is informed and believes that each of the Defendants herein,  
21 including Does 1 through 10, inclusive, is responsible in some capacity for the  
22 events herein alleged, or is a necessary party for obtaining appropriate relief.  
23 Plaintiff will seek leave to amend when the true names, capacities,  
24 connections, and responsibilities of the Defendants and Does 1 through 10,  
25 inclusive, are ascertained.

26  
27 **JURISDICTION & VENUE:**

28 11. The Court has subject matter jurisdiction over the action pursuant to 28

1 U.S.C. § 1331 and § 1343(a)(3) & (a)(4) for violations of the Americans with  
2 Disabilities Act of 1990, 42 U.S.C. § 12101, et seq.

3 12. Pursuant to supplemental jurisdiction, an attendant and related cause  
4 of action, arising from the same nucleus of operative facts and arising out of  
5 the same transactions, is also brought under California's Unruh Civil Rights  
6 Act, which act expressly incorporates the Americans with Disabilities Act.

7 13. Venue is proper in this court pursuant to 28 U.S.C. § 1391(b) and is  
8 founded on the fact that the real property which is the subject of this action is  
9 located in this district and that Plaintiff's cause of action arose in this district.

10  
11 **FACTUAL ALLEGATIONS:**

12 14. Plaintiff went to the Hotel in January 2017, June 2018 and October  
13 2018 with the intention to avail himself of its goods or services, motivated in  
14 part to determine if the defendants comply with the disability access laws.

15 15. The Hotel is a facility open to the public, a place of public  
16 accommodation, and a business establishment.

17 16. Guest rooms are one of the facilities, privileges, and advantages offered  
18 by Defendants to patrons of the Hotel.

19 17. Defendants did not offer persons with disabilities with a range of  
20 options equivalent to other customers during plaintiff's visits. The required  
21 accessible rooms were not dispersed among the various classes of sleeping  
22 accommodations available to patrons, including with respect to the number of  
23 beds provided.

24 18. Plaintiff needed two beds—one for himself and one for his aide, who  
25 assists him.

26 19. Additionally, the Hotel's website did not allow customers to book  
27 accessible guest rooms online.

28 20. Currently, Defendants do not offer persons with disabilities with a range

1 of options equivalent to other customers. The required accessible rooms are  
2 not dispersed among the various classes of sleeping accommodations  
3 available to patrons, including with respect to the number of beds provided.

4 21. Currently, the Hotel's website does not allow customers to book  
5 accessible guest rooms online.

6 22. Transaction counters are another one of the facilities, privileges, and  
7 advantages offered by Defendants to patrons of the Hotel.

8 23. Unfortunately, the transaction counter at the Hotel was more than 36  
9 inches in height. In fact, the transaction counter was about 42 inches in height.

10 24. There was no lowered, 36 inch portion of the transaction counter at the  
11 Hotel for use by persons in wheelchairs to conduct transactions.

12 25. Currently, the transaction counter at the Hotel is more than 36 inches in  
13 height.

14 26. Currently, there is no lowered, 36 inch portion of the transaction  
15 counter at the Hotel for use by persons in wheelchairs.

16 27. Paths of travel are also one of the facilities, privileges, and advantages  
17 offered by Defendants to patrons of the Hotel.

18 28. The path of travel to the Hotel lobby entrance required a person to  
19 navigate a step for which there was no ramp.

20 29. Currently, the path of travel to the Hotel lobby entrance requires a  
21 person to navigate a step for which there is no ramp.

22 30. Entrance into the Hotel lobby is one of the facilities, privileges, and  
23 advantages offered by Defendants to patrons of the Hotel.

24 31. The entrance door hardware at the Hotel lobby had a traditional style  
25 round knob that required tight grasping and twisting of the wrist to operate.

26 32. Currently, the entrance door hardware at the Hotel lobby has a  
27 traditional style round knob that requires tight grasping and twisting of the  
28 wrist to operate.

1       33. Defendants have failed to maintain in operable working condition those  
2 features of facilities and equipment that are required to be readily accessible to  
3 and usable by persons with disabilities at the Subject Property.

4       34. Plaintiff personally encountered these barriers.

5       35. This inaccessible facility denied the plaintiff full and equal access and  
6 caused him difficulty.

7       36. The defendants have failed to maintain in working and useable  
8 conditions those features required to provide ready access to persons with  
9 disabilities.

10       37. The barriers identified above are easily removed without much  
11 difficulty or expense. They are the types of barriers identified by the  
12 Department of Justice as presumably readily achievable to remove and, in fact,  
13 these barriers are readily achievable to remove. Moreover, there are numerous  
14 alternative accommodations that could be made to provide a greater level of  
15 access if complete removal were not achievable.

16       38. A common barrier removal project is modifying transaction counters to  
17 make a portion of the counter accessible. This is a simple construction task,  
18 well within the capabilities of any general contractor. The task can be  
19 completed easily and for a modest price.

20       39. The barriers in this complaint are easily fixable. For example, replacing  
21 door hardware with accessible hardware is a simple and inexpensive task that  
22 can be completed without the need to hire a professional.

23       40. Plaintiff will return to the Hotel to avail himself of its goods or services  
24 and to determine compliance with the disability access laws. He is currently  
25 deterred from doing so because of his knowledge of the existing barriers. If the  
26 barriers are not removed, the plaintiff will face unlawful and discriminatory  
27 barriers again.

28       41. Given the obvious and blatant nature of the barriers and violations

1 alleged herein, the plaintiff alleges, on information and belief, that there are  
 2 other violations and barriers on the site that relate to his disability. Plaintiff will  
 3 amend the complaint, to provide proper notice regarding the scope of this  
 4 lawsuit, once he conducts a site inspection. However, please be on notice that  
 5 the plaintiff seeks to have all barriers related to his disability remedied. See  
 6 *Doran v. 7-11*, 524 F.3d 1034 (9th Cir. 2008) (holding that once a plaintiff  
 7 encounters one barrier at a site, he can sue to have all barriers that relate to his  
 8 disability removed regardless of whether he personally encountered them).

9  
 10 **I. FIRST CAUSE OF ACTION: VIOLATION OF THE AMERICANS**  
 11 **WITH DISABILITIES ACT OF 1990** (On behalf of Plaintiff and against all  
 12 Defendants.) (42 U.S.C. section 12101, et seq.)

13 42. Plaintiff re-pleads and incorporates by reference, as if fully set forth  
 14 again herein, the allegations contained in all prior paragraphs of this  
 15 complaint.

16 43. Under the ADA, it is an act of discrimination to fail to ensure that the  
 17 privileges, advantages, accommodations, facilities, goods and services of any  
 18 place of public accommodation is offered on a full and equal basis by anyone  
 19 who owns, leases, or operates a place of public accommodation. See 42 U.S.C.  
 20 § 12182(a). Discrimination is defined, inter alia, as follows:

- 21 a. A failure to make reasonable modifications in policies, practices,  
 22 or procedures, when such modifications are necessary to afford  
 23 goods, services, facilities, privileges, advantages, or  
 24 accommodations to individuals with disabilities, unless the  
 25 accommodation would work a fundamental alteration of those  
 26 services and facilities. 42 U.S.C. § 12182(b)(2)(A)(ii).
- 27 b. A failure to remove architectural barriers where such removal is  
 28 readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). Barriers are

1 defined by reference to the ADAAG, found at 28 C.F.R., Part 36,  
2 Appendix "D."

- 3 c. A failure to make alterations in such a manner that, to the  
4 maximum extent feasible, the altered portions of the facility are  
5 readily accessible to and usable by individuals with disabilities,  
6 including individuals who use wheelchairs or to ensure that, to the  
7 maximum extent feasible, the path of travel to the altered area and  
8 the bathrooms, telephones, and drinking fountains serving the  
9 altered area, are readily accessible to and usable by individuals  
10 with disabilities. 42 U.S.C. § 12183(a)(2).

11 44. Under the ADA, a hotel must provide persons with disabilities a range of  
12 options equivalent to those available to other persons served by the facility.  
13 Sleeping rooms and suites required to be accessible must be dispersed among  
14 the various classes of sleeping accommodations available to patrons of the  
15 hotel and this takes into account the number of beds provided.

16 45. Here, the failure to provide a range of options equivalent to those  
17 available to other persons served by the facility is discriminatory and a  
18 violation.

19 46. Under the ADA, public accommodations that own or operate a place of  
20 lodging have an obligation to "ensure that individuals with disabilities can  
21 make reservations for accessible guest rooms during the same hours and in the  
22 same manner as individuals who do not need accessible rooms." 28 C.F.R. §  
23 36.302(e)(1)(i).

24 47. Here, the Hotel's failure to provide disabled individuals the ability to  
25 book accessible guestrooms online through their website, like non-disabled  
26 individuals, is a violation ADA.

27 48. Under the 2010 Standards, where the approach to the sales or service  
28 counter is a parallel approach, such as in this case, there must be a portion of

1 the sales counter that is no higher than 36 inches above the floor and 36 inches  
2 in width and must extend the same depth as the rest of the sales or service  
3 counter top. 2010 Standards § 904.4 & 904.4.1.

4 49. Here, no such accessible counter has been provided in violation of the  
5 ADA.

6 50. There must be an accessible path of travel that connects all buildings,  
7 elements and spaces on the same site. To be considered an accessible route,  
8 there cannot be a stair or step. Any such change in level measuring greater than  
9 ½ inch must have a ramp or lift. *Id.* 2010 Standards § 303.4.

10 51. Here, the unramped step to the Hotel lobby entrance is a violation of the  
11 ADA.

12 52. Door hardware must have a shape that is easy to grasp with one hand  
13 and does not require tight grasping, tight pinching, or twisting of the wrist to  
14 operate. 2010 Standards § 404.2.7.

15 53. Here, the failure to provide such door hardware at the Hotel lobby  
16 entrance is a violation of the ADA.

17 54. The Safe Harbor provisions of the 2010 Standards are not applicable  
18 here because the conditions challenged in this lawsuit do not comply with the  
19 1991 Standards.

20 55. A public accommodation must maintain in operable working condition  
21 those features of its facilities and equipment that are required to be readily  
22 accessible to and usable by persons with disabilities. 28 C.F.R. § 36.211(a).

23 56. Here, the failure to ensure that the accessible facilities were available  
24 and ready to be used by the plaintiff is a violation of the law.



1 **II. SECOND CAUSE OF ACTION: VIOLATION OF THE UNRUH CIVIL**  
2 **RIGHTS ACT** (On behalf of Plaintiff and against all Defendants.) (Cal. Civ.  
3 Code § 51-53.)

4 57. Plaintiff repleads and incorporates by reference, as if fully set forth  
5 again herein, the allegations contained in all prior paragraphs of this  
6 complaint. The Unruh Civil Rights Act (“Unruh Act”) guarantees, inter alia,  
7 that persons with disabilities are entitled to full and equal accommodations,  
8 advantages, facilities, privileges, or services in all business establishment of  
9 every kind whatsoever within the jurisdiction of the State of California. Cal.  
10 Civ. Code § 51(b).

11 58. The Unruh Act provides that a violation of the ADA is a violation of the  
12 Unruh Act. Cal. Civ. Code, § 51(f).

13 59. Defendants’ acts and omissions, as herein alleged, have violated the  
14 Unruh Act by, inter alia, denying, or aiding, or inciting the denial of, Plaintiff’s  
15 rights to full and equal use of the accommodations, advantages, facilities,  
16 privileges, or services offered.

17 60. Because the violation of the Unruh Civil Rights Act resulted in difficulty,  
18 discomfort or embarrassment for the plaintiff, the defendants are also each  
19 responsible for statutory damages, i.e., a civil penalty. (Civ. Code § 55.56(a)-  
20 (c).)

21 61. Although the plaintiff was markedly frustrated by facing discriminatory  
22 barriers, even manifesting itself with minor and fleeting physical symptoms,  
23 the plaintiff does not value this very modest physical personal injury greater  
24 than the amount of the statutory damages.

1           **PRAYER:**

2           Wherefore, Plaintiff prays that this Court award damages and provide  
3 relief as follows:

4           1. For injunctive relief, compelling Defendants to comply with the  
5 Americans with Disabilities Act and the Unruh Civil Rights Act. Note: the  
6 plaintiff is not invoking section 55 of the California Civil Code and is not  
7 seeking injunctive relief under the Disabled Persons Act at all.

8           2. Damages under the Unruh Civil Rights Act, which provides for actual  
9 damages and a statutory minimum of \$4,000 for each offense.

10           3. Reasonable attorney fees, litigation expenses and costs of suit, pursuant  
11 to 42 U.S.C. § 12205; and Cal. Civ. Code §§ 52.

12  
13 Dated: December 31, 2018           CENTER FOR DISABILITY ACCESS

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15  
16 By: 

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18           Chris Carson, Esq.  
19           Attorney for plaintiff  
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